

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte STEVEN L. GREENE

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Appeal No. 2004-0217  
Application 09/824,544

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ON BRIEF

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Before COHEN, MCQUADE, and BAHR, Administrative Patent Judges.  
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Steven L. Greene appeals from the final rejection of claims 1 through 6, 8 through 21, 23, 24 and 28. Claim 27 stands allowed. Claims 7, 22, 25 and 26, the only other claims pending in the application, stand objected to as depending from rejected base claims.

THE INVENTION

The subject matter on appeal relates to "pallets for supporting intermediate bulk containers (IBC's) or bulk bags"

(specification, page 1). Representative claim 1 reads as follows:

1. A modular pallet comprising:  
a top wall;  
a bottom wall;  
a guide channel defining portion configured for defining at least one guide channel at least partially between the top wall and the bottom wall;  
at least one opening in the bottom wall, wherein the opening being adapted to receive a corresponding lift strap of a bulk bag so that the lift strap defines a loop in the at least one guide channel; and  
an insert member configured to be inserted into the at least one guide channel for engaging the loop of a lift strap received in the at least one opening to thereby fasten the bulk bag to the modular pallet for forming a bulk bag combination, wherein the insert member being configured for engagement by a lifting device for lifting and maneuvering the bulk bag combination.

#### THE REJECTION

Claims 1 through 6, 8 through 21, 23, 24 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,875,419 to Helton et al. (Helton).

Attention is directed to the main and reply briefs (Paper Nos. 17 and 19) and to the final rejection and answer (Paper Nos. 8 and 18) for the respective positions of the appellant and the examiner regarding the merits of this rejection.

#### DISCUSSION

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v.

Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Helton discloses a collapsible pallet comprising a planar top 10, a planar bottom 11, pillars 14 formed by paired tabs 25 and 26 cut out from the top and bottom and extending therebetween, openings in the top and bottom formed by the cut out tabs, opposite sides 12 defining forklift orifices/channels 18 and opposite ends defining forklift orifices/channels 28. The opposite ends also embody fastening structure adapted to be inserted between the top and bottom into engagement with adjacent pillars to maintain the pallet in an erected condition. The fastening end structure shown in Figures 1 through 6 consists of foldable tabs having vertical portions 19 and fastening portions 20, and the fastening end structure shown in Figures 7 and 9 consists of tubular elements having bottoms 32, sides 33 and tops 34.

As indicated above, independent claim 1 recites a modular pallet comprising, inter alia, an insert member "configured for engagement by a lifting device for lifting and maneuvering the bulk bag combination." Similarly, independent claim 28 recites a modular pallet comprising, inter alia, insert means "adapted to be engaged by a lifting means for lifting and maneuvering the

bulk bag combination.” The examiner finds (see pages 2 and 3 in the final rejection) that these limitations are met by either the end fastening structure shown in Helton’s Figures 1 through 6 or the end fastening structure shown in Helton’s Figures 7 and 9.

In this regard, the examiner submits that

the [Helton] tab (20 or part of 34) which extends into the channel between the tabs 25 and 26, located over the opening caused by the fold 27 (shown in Fig. 5), is capable of being engaged by an appropriately configured lifting device, such as one which will extend between the vertical end portion 19 and either of the tabs 25,26 or such as one which will extend into such a channel from one of the bottom openings. The examiner further asserts that said tabs are capable of being engaged by such a lifting device which is capable of maneuvering the combination of a bulk bag with the pallet of Helton [answer, page 5].

The contention that Helton’s insertable end structure is capable of being engaged by some unspecified lifting device extending through one of the bottom openings in the pallet is somewhat far-fetched and completely lacking in factual support. On the other hand, the examiner’s alternative position that the insertable end structure is capable of being engaged by a lifting device extending between vertical end portion 19 and the tabs 25, 26, e.g., by a forklift tine extending into a forklift orifice/channel 28, arguably is more plausible. Ostensibly, however, any such engagement would be incidental and fairly minimal along one of the side edges of the insertable end

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structure. Such limited engagement cannot reasonably be construed as serving the purpose of lifting and maneuvering the bulk bag combination as required by the insert member/means limitations at issue. Thus, the examiner's determination that Helton meets these structural limitations, and is anticipatory with respect to the modular pallet recited in claims 1 and 28, is not well founded.

Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of independent claims 1 and 28, and dependent claims 2 through 6, 8 through 21, 23 and 24, as being anticipated by Helton.

#### SUMMARY

The decision of the examiner to reject claims 1 through 6, 8 through 21, 23, 24 and 28 is reversed.

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REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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JOHN P. MCQUADE	)	
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JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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